

**MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS
COMMITTEE MEETING
August 17, 2010 at 1:00 P. M.
Room 445, State Capitol, State Capitol Complex**

Members Present: Sen. Lyle W. Hillyard, Co-Chair
Rep. Bradley G. Last, Vice Chair
Sen. Daniel R. Liljenquist, Vice Chair
Rep. Douglas C. Aagard
Rep. David Clark, Speaker
Rep. Brad L. Dee
Rep. James R. Gowans
Sen. Scott K. Jenkins
Rep. David Litvack
Sen. Peter C. Knudson
Rep. Rebecca D. Lockhart
Sen. Karen Mayne
Rep. Carol Spackman Moss
Sen. Wayne L. Niederhauser
Sen. Luz Robles
Sen. Ross I. Romero
Rep. Jennifer M. Seelig
Sen. Michael G. Waddoups, President

Members Excused: Rep. Ron Bigelow, Co-Chair
Sen. Patricia W. Jones

Staff Present: Jonathan Ball, Legislative Fiscal Analyst
Steven Allred, Deputy Director
Greta Rodebush, Legislative Secretary

Speakers Present: Becky Bruso, Governor's Office of Planning and Budget
Patrick Lee, Office of the Legislative Fiscal Analyst
Tanjii Northrup, Utah Department of Insurance
Theresa Whiting, Utah Department of Health
Walt Baker, Utah Department of Environmental Quality
Michael Styles, Utah Department of Human Services
Christine Kearn, Office of the Governor
Werner Haidenthaller, Attorney General's Office
Stephen Jardine, Office of the Legislative Fiscal Analyst
Kevin Coyle, Public Consulting Group
Sean Huse, Public Consulting Group
Les Hendrickson, Public Consulting Group
Michael Hales, Utah Department of Health
Gary Ricks, Office of the Legislative Fiscal Analyst
Jim Crowder, Enterprise Rent-a-Car
Ben Leishman, Office of the Legislative Fiscal Analyst
Russell Frandsen, Office of the Legislative Fiscal Analyst

Note: A copy of related materials and an audio recording of the meeting can be found at www.le.utah.gov.

A list of visitors and a copy of handouts are filed with the committee minutes.

1. Call to Order/Approval of Minutes

Co-Chair Hillyard called the meeting to order at 1:39 p.m. Co-Chair Bigelow and Sen. Jones were excused from the meeting.

Vice Chair Last noted one correction to the minutes of the June 22, 2010 meeting. The list of members present did not include Rep. Aagard's name.

MOTION: Vice Chair Last moved to approve the minutes of the Joint Executive Appropriations Committee meeting on June 22, 2010 with the noted correction. The motion passed unanimously with Sen. Knudson, Sen. Niederhauser, Sen. Romero, Sen. Robles, and Speaker Clark absent for the vote.

2. Federal Funds/ARRA/Non-Federal Grants Reports

Federal Funds

Becky Bruso, Governor's Office of Planning and Budget, presented the Federal Funds Report through July 31, 2010. There were three new grants and four reapplications of existing federal grants requiring legislative action. In addition, the Governor's Office approved eight new federal grants, eight reapplications of existing grants, and three revisions of existing grants. A grant revision is a new category for grants previously approved by EAC or the Governor's Office, in which the grant amount has increased.

Rep. Dee inquired about the Department of Insurance, Health Insurance Premium Review grant, item 3 on page 5. The federal award is \$1 million. Tanjii Northrup, Director, Health Insurance Division, explained that the grant monies will be used to enhance the current rate review process for health insurance premiums for smaller and larger employers and individual major medical insurance. This grant will provide transparency in the rating process to the public, provide some required reporting to Health and Human Services (HHS), and provide additional transparency into the Utah Health Exchange. This grant is part of a five-year cycle.

President Waddoups asked about the Department of Health, Affordable Care Act (ACA) Maternal, Infant and Early Childhood Home Visiting Program, item 2 on page 5. The federal award is \$1,535,817. The program description suggests the grant is creating more bureaucracy rather than providing actual services.

Theresa Whiting, Director, Bureau of Child Development, Department of Health, stated that grant monies go directly to home visiting services for families at risk due to poverty, abuse and neglect, substance abuse, and domestic violence. The program helps parents improve the development of children

and links families to community services. President Waddoups suggested that the program description more accurately reflect these services.

President Waddoups inquired about the federal reapplication, Department of Environmental Quality, Wetland Program Development Grant, item 4 on page 6. The federal award is \$249,758 with a state match of \$88,088. He expressed concern that these funds are going into studies rather than demonstrable outcomes.

Walt Baker, Director, Division of Water Quality, Department of Environmental Quality, stated that the Division is doing leading edge work on the Great Salt Lake. Utah's wetlands not only lie on the perimeter of the Great Salt Lake, but also on the perimeter of an urban community. Seventy-five percent of the state's wastewater flows into the Great Salt Lake and this is having a deleterious effect on the habitat and ecosystem. The EPA is providing grant monies to study how to protect wetlands. There are no criteria or national standards available to protect these types of wetlands. This grant will further the work the state is already doing in developing metrics, measurements, and tools to assess the wetlands.

President Waddoups asked about the federal grant approved by the Governor's Office, Department of Human Services, Senior Community Service Employment Program, item 1 on page 8. The federal award is \$799,150 with a local match of \$389,878. He asked for an explanation of "older" Americans.

Michael Styles, Division of Aging and Adult Services, stated that the grant will retrain aging adults 60 years of age and older for employment.

President Waddoups stated that his purpose for raising this question is that we are trying to educate children for careers and yet we are putting money into studies and retraining people over sixty to work.

Rep. Seelig asked for a clarification on job training and the need to retrain people for work opportunities who can not afford to retire. Mr. Styles stated that this funding would enhance individuals' job skills and teach them new ones. The training period is for two years at which point in time, the trainee has hopefully found employment. Mr. Styles said that many older Americans need to work out of necessity.

Co-Chair Hillyard asked about the \$389,878 local match. Mr. Styles stated that the local match comes from counties that contribute to the Community Service Employment Program (CSEP).

Sen. Robles asked that the Division of Aging and Adult Services provide data on how many of our seniors are having to work because of the economy. This data could be a good component to have in substantiating the need for retraining, particularly as the demand for technology increases. Sen. Robles requested that information include poverty levels and income brackets. Ms. Bruso stated that she would provide that information.

ARRA

Ms. Bruso presented the ARRA Federal Funds Report. There was one new ARRA grant and no reapplications of existing grants requiring legislative action. The Governor's Office approved two new ARRA grants and no reapplications.

President Waddoups inquired about the ARRA grant, Governor's Office, State Advisory Council, item 1 on page 13. The federal award is \$695,884 with a state match of \$487,118. President Waddoups read information stating that the State Advisory Council would function much like the defunct Child and Family Cabinet Council. He asked if this grant creates more bureaucracy.

Dr. Christine Kearl, Deputy for Education, Office of the Governor, spoke on behalf of the agencies that had input in the grant application. She explained that the Head Start Act of 2007 authorized governors to create state advisory councils with funding provided by the State Fiscal Stabilization Funding of 2009. The goals of these councils are to increase the participation of under represented populations, such as students in poverty and ethnic minorities and to increase their access to early childhood programs. Other goals would be to develop career ladder levels for teachers of early childhood, high quality early learning standards in the state, and data collection.

Co-Chair Hillyard asked about the annual state match of \$487,118. Dr. Kearl stated that Utah has an Early Childhood Program that qualified Utah to apply for these funds. Funding for this program is the state match.

President Waddoups inquired about the federal grant approved by the Governor's Office, Attorney General, John R. Justice Grant Program, item 5 on page 7.

Werner Haidenthaler, Attorney General's Office, explained that this grant will encourage qualified individuals committed to working for government as prosecutors and public defenders by providing student loan repayment assistance up to a maximum of \$4,000.

Non-Federal Grants

Ms. Bruso presented the Non-Federal Grants Report. There were two new grants and no reapplications of existing grants requiring legislative action. There were no new grants or reapplications of existing grants approved by the Governor's Office.

MOTION: Vice Chair Last moved to recommend acceptance of the federal and non-federal grants as outlined on page 1, "Federal Funds Review and Approval" under the heading, "Grants Requiring EAC Review and Recommendation" and dated today, August 17, 2010. The motion passed with Pres. Waddoups voting in opposition. Sen. Romero was absent for the vote.

3. Feasibility Study on Privatization of Portions of the State Hospital and Utah State Developmental Center

Stephen Jardine, LFA, stated that the Legislature issued an RFP in November 2009 to do a feasibility study on privatization of portions of the State Hospital (USH) and the Utah State Development Center (USDC). In April 2010, the Executive Appropriations Committee awarded the RFP to Public Consulting Group (PCG).

Mr. Jardine introduced Kevin Coyle, Public Consultant Group (PCG). He was assisted by lead consultants Les Hendrickson and Sean Huse.

Mr. Coyle presented the feasibility study. The study examined whether a private (non-governmental) entity could operate the Forensic Unit at the USH and two semi-secure units at the USDC (Transitional Living Center (TLC) and Woodland), and provide: (1) the same level of services at the same cost, (2) the same level or higher level of services at a cost savings, and (3) a higher level of service at the same cost.

Mr. Coyle reported that PCG took a multi-dimensional approach, considering financial and organizational implications as well as consequences on services.

PCG developed baseline models to reflect the units' current cost and programmatic operations and compared them to models PCG developed using peer facilities throughout the country. PCG also conducted extensive stakeholder interviews to gather information and feedback on the feasibility of privatizing these units.

PCG's analysis showed that private entities could potentially provide the same level of services in the units for less cost. The cost per patient could be reduced by a private entity by making the benefits-to-salary ratio more in line with what private entities pay. These savings, however, may come at a price. A reduction in the overall compensation for the employees could decrease the demand for jobs at the affected units, which in turn could increase staff turnover. Studies show that staff turnover has a direct negative impact on quality of care.

The study concludes that privatizing the Forensic Unit at USH or the TLC and Woodland Units at USDC would not be in the best interest of the state. PCG's analysis showed that while it is possible and potentially feasible to privatize units at a cost savings, it may result in a reduction in the quality and continuity of care provided to the patients within the units studied.

Mr. Coyle pointed out that if the state decides to pursue privatization, PCG recommends that clear standards be set which define staffing ratios, minimum clinician licensure levels, and other metrics to ensure that the same level of service is provided by the prospective vendor.

Rep. Dee expressed concern that the state comparisons only include one western state, California. Mr. Coyle clarified that PCG contacted over 120 developmental centers around the country and selected comparable facilities in California, Minnesota, Ohio, and Tennessee. Mr. Huse commented that PCG took a look at a number of western state mental hospitals. Since the mix of civil and forensic populations vary it makes it difficult to make comparisons.

Rep. Dee commented that the employment pool for these particular jobs in the western United States is very shallow. Attracting qualified people may be difficult.

4. Medicaid Management Information System Replacement Options

Michael Hales, Director, Division of Health Care Financing, reported on the Department of Health's plans for replacing the Medicaid Management Information System (MMIS). To assist with its planning efforts, the Department hired FOX Systems, Inc. (FOX), a leading consultant group in Medicaid systems. Mr. Hales explained that MMIS, the State's claim payment system, has been in operation for over 25

years and uses an old programming language. In order to accommodate health care reform and payment reform initiatives, the Department looked at a full range of options in replacing that system.

Mr. Hales stated that the Centers for Medicare and Medicaid Services (CMS) asked the State to go through a prescribed process of approving a payment contract or vendor arrangement. CMS will pay 90 percent of the cost to develop the new system, and 75 percent of the cost to maintain and manage the new system.

Mr. Hales reviewed selected pages from FOX's Cost Benefit Analysis and Recommendations Report. He discussed the distribution of MMIS solutions among states and vendors, total implementation and operating costs of four replacement options, the pros and cons of those options, and a feasibility analysis.

FOX consultants recommended that Utah pursue Option B (Contractor Integrator) with an estimated cost of \$331 million over 14 years. Option B is the least costly option associated with an acceptable level of risk the State is willing to assume. Option B means Utah selects a Contractor Integrator to transfer, modify, and enhance a state-of-the-art, certifiable MMIS under the management of the State.

Speaker Clark asked for an update on the fraud and abuse detection system, the data warehouse upgrade, and the pharmacy point of sale and drug rebate system.

Mr. Hales stated that the Legislature appropriated \$3 million one-time General Fund to begin the MMIS replacement. The Department anticipates that it will need about \$11 million General Fund over the course of the project to complete it. To move into project status, CMS has to approve an advanced planning document which allows the Department to bill 90 percent of the costs to CMS. The Department prepares an RFP which CMS also approves. The Department releases the RFP for vendors to bid on.

Mr. Hales stated that the data warehouse upgrade and the fraud and abuse detection system are first priorities. CMS has approved the advanced planning document for both of these projects. The RFP for the fraud and abuse detection system has been retracted and amended to get more vendor participation. CMS is currently reviewing the RFP. CMS has 60 days to review the RFP but the Department is encouraging CMS to complete the review as quickly as possible. The upgrades to the data warehouse should be in place by December.

The fraud and abuse detection prescreening tool contract has been awarded and should be in place by November 2010. The after-the-fact look back fraud and detection should be in place by May 2011. The Department is currently working on the RFP for the pharmacy point of sale system which should be completed next summer.

Speaker Clark is very interested in seeing the cost savings on these systems.

Rep. Litvack asked about the Department's approach in seeking the additional funding for MMIS. Mr. Hales indicated that with the money that has been appropriated thus far, the four modules will be completed. The Department will need to determine how much money is needed to build the core system. CMS has asked the Department to put together a plan to build a system they can certify and that gets completed.

Speaker Clark stated that the anticipated savings of this project could become a funding pathway for the State.

5. Fleet Operations Report

Gary Ricks, LFA, presented the issue brief "Reducing Costs Associated With Vehicle Use."

Mr. Ricks remarked that the State has taken significant steps to reduce vehicle costs since the Legislature centralized fleet management in 1996. Since the creation of the Division of Fleet Operations, the Department of Administrative Services has made some changes that save money. Fleet Operations Report findings indicate that agencies can achieve additional savings through improved user information, vehicle sharing, and eventual fleet size reduction.

Mr. Ricks discussed in detail cost per mile, vehicle cost comparisons, leveraging the statewide motor vehicle pool, a vehicle sharing pilot project, and a new usage model for right sizing the state's fleet. Mr. Ricks presented the following recommendations:

1. *The Division of Finance create separate accounting object codes for "standard" (\$0.36/mile) and "high" (\$0.50/mile) mileage reimbursement.*
2. *The Division of Fleet Operations implement an automated decision tree for use in reserving a state vehicle.*
3. *The Division of Fleet Operations collect and maintain in its database the "home" address of each fleet vehicle.*
4. *Capitol Hill agencies organize and participate in a cross-agency vehicle sharing pilot project.*
5. *The Division of Fleet Operations report on the first year results of its new usage model to right size the fleet and eliminate "low use" vehicles.*

Speaker Clark asked if the 4-day work week has created a demand for utilization during the week while increasing the number of days state vehicles are sitting idle. Mr. Ball stated that the Legislative Auditor General's report on the 4-day work week found that there were some savings associated with fleet. Other findings showed that there was more utilization on four days of the week, and one day when fleet vehicles were sitting idle.

Sen. Niederhauser asked if the state pays rental car taxes. Jim Crowder, Director, Business Rental Sales, Enterprise Rent-a-Car, stated that the state does not pay taxes on rental cars. He clarified that cars rented at the airport are taxed at 30 percent, while those rented at a local branch are taxed at 16 percent.

President Waddoups asked if the Enterprise contract applies to out-of-state travel. Mr. Crowder confirmed that Enterprise covers out-of-state travel.

MOTION: Vice Chair Last moved to approve the transmittal of a letter from the chairs of the Executive Appropriations Committee to the Department of Administrative Services (DAS) requesting that the Department:

1. *Establish separate object codes for \$0.36 and \$0.50 per mile mileage reimbursement;*
2. *Implement an automated "decision tree" for on-line reservations that compares various vehicle options prior to making reservations;*
3. *Collect and maintain "address" information for state fleet vehicles;*

and refer recommendations 4 and 5 to the Capital Facilities and Government Operations Appropriations Subcommittee for further action:

4. *Capitol Hill agencies organize and participate in a cross-agency vehicle sharing pilot project.*
5. *The Division of Fleet Operations report on the first year results of its new usage model to right size the fleet and eliminate "low use" vehicles.*

The motion passed unanimously with Sen. Liljenquist, Sen. Robles, and Sen. Romero absent for the vote.

6. FMAP Extension and Education Jobs Funding

Education

Ben Leishman, LFA, noted one correction to the Issue Brief, "Federal Funding for Education and Medicaid." In the last line on page 1, "was lower in FY 2009 than it was in FY 2006," should read, "was lower in CY 2009 than it was in CY 2006."

Mr. Leishman discussed education jobs funding set forth in H.R. 1586 that was enacted on August 10, 2010. The Education Job Fund (Edu-Jobs) provides \$10 billion to states for use in K-12 public schools. Utah's estimated share is approximately \$100 million. These funds are intended to support school-level education jobs during the next school year (2010-2011). The funds can be distributed to school districts and charter schools through the Minimum School Program based on the Weighted Pupil Units or a district or charter school's relative share of federal Title I funds.

Edu-Jobs funding will be handled through the Governor's Office. The Governor has until September 9, 2010 to apply for the funds, and the U.S. Department of Education has until September 24, 2010 to distribute funding to the states. If the Governor fails to apply for the funding, the Secretary of Education shall allocate funds to another entity or entities within a state.

Mr. Leishman pointed out that under Utah's federal funds approval process (UCA 63J-5-202, 204), a high impact federal grant must be approved by the full Legislature in an annual general session or special session before funds can be expended.

In order to receive funds, states must meet maintenance of effort (MOE) provisions. In its application, the Governor's Office will provide documentation that the state meets one of these MOE provisions.

Mr. Leishman noted that funding may only be used for school-level compensation, benefits, and other expenses necessary to hire or retain existing employees, which will likely include all school-site employment categories. School districts may not use funds for general administration or other support service expenditures. However, the State may retain up to 2 percent for administrative costs or to create/retain state level positions. Finally, the State may not use these funds to replenish rainy-day funds or reduce/retire debt, and funds may not be used for higher education.

Medicaid

Mr. Frandsen, LFA, stated that H.R. 1586 will increase the Federal Medical Assistance Percentage (FMAP) for the first six months of calendar year 2011, providing \$30-\$40 million in additional federal funds for Medicaid and Foster Care programs. This funding does not require Legislative approval but it does require the Governor to certify within 45 days that Utah will use the funds.

Mr. Frandsen added that local government entities who participate directly in the Medicaid program will receive new federal funds.

The \$30-\$40 million is made up of four components, three of the four, all of the states receive. The fourth component is dependent on the unemployment rate. Medicaid programs for the first six months of 2011, will continue to receive a 2.91 percent increased federal match rate if unemployment rates are above 6 percent. As of June 2010, the Consensus Estimate for Utah's unemployment rate is 6.7 percent for 2011.

Mr. Frandsen stated that in the past, the Legislature has used similar funding on a one-time basis to free-up General Fund or to fund mandatory caseload and inflation growth. He noted that as much as \$30 million General Fund may be needed for new FY 2011 Medicaid caseload growth.

Committee discussion

Co-Chair Hillyard stated that it would be interesting to see how the \$16 billion in Medicaid funding will be divided out among the states. Mr. Frandsen stated that he would provide Co-Chair Hillyard with that information.

Speaker Clark asked if the projected Medicaid caseload growth could change and what is meant by "certify" the use of funds. Mr. Frandsen stated that the Department's original request for \$30 million for Medicaid caseload growth was made prior to the 2010 General Session. That number will be updated as it gets closer to the 2011 General Session. Mr. Frandsen also explained that the Governor has 45 days after the enactment of H.B. 1586 to "certify" that the state will request and use the additional federal funds.

In regards to the Edu-jobs funding, Rep. Litvack asked who makes the decision as to whether the funds distributed through the Minimum School Program are based on the Weighted Pupil Units or a district or charter school's relative share of federal Title I funds. He also asked who determines which of the three maintenance of effort provisions will be met.

Jonathan Ball, LFA, responded that the distribution of Edu-jobs funding should be done collaboratively. Under federal law, the Governor must apply for the money. Under Utah's federal funds process, the Legislature has to approve a large grant, which is typically done through an appropriation.

Mr. Ball stated that LFA has been working with the Governor's Office to determine which of the three maintenance of effort provisions Utah would qualify for. It appears that Utah would only qualify under provision three, maintaining K-12 and higher education spending at 2006 levels in those states where tax revenue was lower in CY 2009 than it was in CY 2006.

Rep. Litvack asked if there is any concern that the Governor's Office would not certify the spending of Medicaid funds. John Nixon, Executive Director, Governor's Office of Planning and Budget, clarified that these additional Medicaid funds are funds that the federal government reallocated from other programs. At this point in time, the Governor has not made a formal decision, but certainly understands the need. He fully intends to sit down with legislative leadership to map out a course of action.

Rep. Litvack asked that the Governor's Office keep the committee informed as that decision is being made.

Speaker Clark expressed concern that Congress has unequivocally carried out the constitutional responsibilities of the State concerning the legislative appropriation process.

Speaker Clark asked the Governor's Office what definition was used in satisfying the maintenance of efforts requirements for ARRA funding? Mr. Nixon stated that he would provide and discuss that information with Speaker Clark.

Speaker Clark commented that while Congress is willing to do our job today in deciding how this appropriation is going to be spent, it fails to make decisions in many other critical areas.

7. Other Business

Co-Chair Hillyard recognized Vice Chair Last for a motion.

MOTION: Vice Chair Last moved to adjourn. The motion passed unanimously with Sen. Liljenquist absent for the vote.

Co-Chair Hillyard adjourned the meeting at 3:52 p.m.